

Staff Summary Report

Council Meeting Date: 01/24/08

Agenda Item Number: 34

SUBJECT: Request approval of a construction job order with ForeSite Design and Construction, Inc. and a construction change order contingency for Kiwanis Park Tennis Court Resurfacing.

DOCUMENT NAME: 20080124PWDR04 **KIWANIS COMMUNITY PARK (0706-25) PROJECT NO. 6302392**

SUPPORTING DOCS: Yes

COMMENTS: Construction job order in the amount of \$855,681, subject to execution of the final written contract, and construction change order contingency of \$30,000.

PREPARED BY: DONNA RYGIEL, ENGINEERING CONTRACT ADMIN (x8520)

REVIEWED BY: ANDY GOH, DEPUTY PW MANAGER/CITY ENGINEER (x8896)

LEGAL REVIEW STAFF SUMMARY ONLY: ANDREW CHING, CITY ATTORNEY (x8575)

FISCAL NOTE: Sufficient funds are available in Capital Improvement Fund No. 6302392.

RECOMMENDATION: Approve Job Order and contingency amount.

ADDITIONAL INFO: This project includes the resurfacing of the Kiwanis Park tennis courts. The existing court surface will be removed, repairs to the underlying substrate will be made, and a new court surface will be applied.

The proposal of ForeSite Design and Construction, Inc. has been reviewed by staff and found to be in order.

This award is conditioned upon execution of final written contract documents and approved submittals of any required payment bond, performance bond, ensure to insure affidavit, insurance certificates or other documents.

Approved by Glenn Kephart, Public Works Manager



**CITY OF TEMPE, ARIZONA
PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION**

CONTRACT DOCUMENTS

FOR

KIWANIS PARK TENNIS COURT RESURFACING

PROJECT NO. 6302392

JOB ORDER CONTRACT

CITY COUNCIL MEMBERS

Mayor – Hugh Hallman

Mark Mitchell
Barbara J. Carter
Shana Ellis

P. Ben Arredondo
Onnie Shekerjian
J. Hut Hutson

City Manager – Charles W. Meyer
City Engineer – Andy Goh, P.E.

2008

CITY OF TEMPE, ARIZONA
PUBLIC WORKS DEPARTMENT
DIVISION OF ENGINEERING

JOB ORDER CONTRACT NO. C2005-80

JOB ORDER NO. NINETEEN

KIWANIS PARK TENNIS COURT RESURFACING

PROJECT NO. 6302392

This JOB ORDER made and entered into on this 24th day of January, 2008, by and between the CITY OF TEMPE, ARIZONA, a municipal corporation, hereinafter called the **CITY** and FORESITE DESIGN & CONSTRUCTION, INC. hereinafter called the **JOC CONTRACTOR** amends the original Contract made and entered into by and between the same parties on April 21, 2005, (Contract No. C2005-80).

WITNESSETH: That the JOC Contractor, for and in consideration of the sum to be paid by the City, in the manner and at the times hereinafter provided, and of the other mutual covenants and agreements hereinafter contained, and under penalties expressed in the bonds hereto attached, hereby agrees, for itself, its heirs, executors, administrators, successors, and assigns as follows:

ARTICLE I – JOB ORDER PRICE AND WORK LOCATION: The JOC Contractor shall furnish any and all plant, materials, labor, construction equipment, services and transportation (all applicable taxes included) required for performing all work for the construction of the Kiwanis Park Tennis Court Resurfacing, (Project No. 6302392) for the sum of Eight Hundred Fifty Five Thousand Six Hundred Eighty One and 00/100 Dollars (\$855,681.00), as detailed in the Proposal (Exhibit “A”), and to completely and totally construct the same and install

the materials therein for the City, in a good and workmanlike and substantial manner and to the satisfaction of the City or its properly authorized agents and strictly pursuant to and in conformity with the Specifications and Plans for the above referenced project(s) and other documents that may be made by the City through the Engineer or properly authorized agents, as provided herein. The full street or physical address of the construction Work location is 6227 S. All America Way. The JOC Contractor shall list each Work location in any and all Contract Documents with each subcontractor at any level and each subcontractor shall include each Work location in any and all Contract Documents with its subcontractors at any level.

ARTICLE II – REQUIRED SUBMITTALS: The JOC Contractor shall submit the completed forms referenced in the Forms Appendix (Exhibit “B”) prior to a Notice to Proceed with the above referenced project.

ARTICLE III – AMENDMENT: These Job Order Agreement documents, City of Tempe Contract No. C2005-80, Performance Bond, Payment Bond and Certificate(s) of Insurance are by this reference made a part of this Job Order to the same extent as if set forth herein in full. All other provisions of the original Contract where not inconsistent with this Job Order Agreement shall remain binding on the parties hereto.

ARTICLE IV – START OF WORK: Work shall start as soon as practicable, and in no case later than seven (7) calendar days after the Notice to Proceed and shall be completed within one hundred thirty (130) calendar days thereafter.

Kiwanis Park Tennis Court Resurfacing
Project No. 6302392

IN WITNESS WHEREOF, the parties hereto have executed this Job Order this _____ day
of _____, 2008.

CITY OF TEMPE, ARIZONA

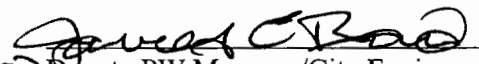
By _____
Mayor

By _____
Public Works Manager

ATTEST:

City Clerk

Recommended by:


(FDC) Deputy PW Manager/City Engineer

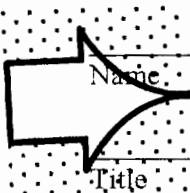
APPROVED AS TO FORM:

City Attorney

The JOC Contractor warrants that the person who is signing this Agreement on behalf of
the JOC Contractor is authorized to do so and to execute all other documents necessary to
carry out the terms of this Agreement.

JOC CONTRACTOR
Foresite Design & Construction, Inc.

**SIGN
HERE**


Name: _____
Title: _____

Federal I.D. No. /Social Security No.

Certified to be a true and exact copy.

Karen M. Fillmore
Records Specialist

EXHIBIT A



January 2, 2008

Via e-mail: mark_weber@tempe.gov

JOC PROPOSAL FORM: Revision No. 1

Mr. Mark Weber
City of Tempe
31 East 5th Street
Tempe, Arizona 85281

RE: Kiwanis Park Tennis Court Resurfacing
Project No.

Dear Mr. Weber,

ForeSite Design & Construction, Inc. proposes to furnish all labor, materials, tools and equipment necessary for the resurfacing of 14 tennis courts at the Kiwanis Park tennis facility project for the total sum of: ***Eight Hundred Fifty Five Thousand Six Hundred Eighty One and 00/100th Dollars (\$855,681.00).***

All work is in accordance with the following documents:

Request for Qualifications (RFQ) (10 pages) entitled "Kiwanis Park Tennis Court Resurfacing" prepared by ForeSite Design & Construction, Inc.

In submitting this proposal, we agree:

1. To hold the proposal open for sixty (60) days after the date of this proposal.
2. To commence construction upon written notice to proceed, City of Tempe building permit and a mutually agreed upon start date.
3. To accomplish the work in accordance with the following clarifications and exclusions attached.

Sincerely,
ForeSite Design & Construction, Inc.

A handwritten signature in black ink, appearing to read "Jeff Eades".

Jeff Eades
Construction Manager

Clarifications and qualifications:

1. Our approach to this project is based on a continuous work flow. Once the project team develops a schedule and we mobilize to start work, work will continue without significant "stops". All owner provided scopes of work and owner provided material and equipment will be furnished timely based on the schedule.
2. The scope of work covers the court surfacing of fourteen (14) courts with the Rebound Ace Air Cushion system Per the attached proposal dated, 12-20-07, by Ace Surfaces. The practice courts are excluded from this proposal.
3. A minimum of eight (8) weeks lead-time is to be allowed between order of materials and the start of installation.
4. Testing Laboratory services will be employed and pay for by the City of Tempe, if required.
5. A five year warranty on workmanship and materials for the surface is included.
6. Reworking the existing court that Ace Surfaces recently installed is included.
7. Roll Off containers for all demolition and construction debris is to be provided by the C.O.T.
8. The wind screen netting at the east access gate will be removed & replaced by the C.O.T. if access is required through this gate.
9. Full-time supervision has been reduced to approximately five (5) hours per week of on-site supervision and/or coordination at the request of the City of Tempe. The subcontractor performing the court surface replacement will be working seven (7) days per week. ForeSite did not include supervision for weekend (Saturday and Sunday) work at the request of the City of Tempe. ForeSite personnel will remain available for emergency contact for work being performed over the weekend.
10. The Kiwanis Park staff has allowed for the storing and staging of construction materials within the existing secured areas within and surrounding the tennis courts.
11. In order to be complete within 8 weeks, either five (5) or ten (10) courts will be unusable at all times during the 8-week duration. The practice courts will also be unusable for approximately 15 work days concurrently with the other courts being unusable.
12. The existing asphalt, sub base and sub grade have been tested by and considered suitable by the City of Tempe. ForeSite and its subcontractors are not responsible for post-construction repairs or warranty work attributable to failures in the existing asphalt, sub base or sub grade. ForeSite is responsible for crack filler/repair and surface prep of the existing asphalt as part of this proposal.

Exclusions:

- Practice courts
- Asbestos abatement or hazardous material removal
- Building Permit
- Development fees
- Utility company charges, design fees or consumption fees
- Material acceptance testing or fees
- Special inspections

- **Relocation of existing utilities**
- **Micro-sealing of asphalt**
- **Community information bulletins or news letters**
- **Roll off trash containers**
- **Portable toilets**



City of Tempe

Job Order Price

COT Project Name: **Kiwanis Park Tennis Court Resurfacing** 1/2/2008

COT Project Number:

Price of Subcontractor(s)	\$704,900
Price of Subconsultant(s) (If applicable)	\$0
General Conditions	\$7,712
Preconstruction Labor - SOQ	\$2,780
Construction Labor	\$0
Subtotal	\$715,392

Overhead and Profit (per City's Table 1)	\$72,733
Total	

Insurance (1.53%)	\$13,092
Bonds (1.1%)	\$9,412
Sales tax (5.265%)	\$45,052
Combined Total	\$855,681

Contractor's Contingency	\$0
Owner's Contingency	\$0

Group	Division	Description	Takeoff Quantity	Labor Man Hrs	Labor Amount	Material Amount	Sub Amount	Equip Amount	Other Amount	Total Amount
1.000		GENERAL REQUIREMENTS								
1.002		Project Manager								
		Project Manager	1.00 wk	40.000	2,182	-	-	-	-	2,182
1.003		Project Superintendent								
		Project Superintendent	1.00 wk	40.000	1,688	-	-	-	-	1,688
1.011		General Field Supervisor								
		General Field Supervisor	8.00 hr	8.000	520	-	-	-	-	520
1.212		Pre-Const. Phase Services								
		Pre-Construction Phase Service	1.00 ls		2,321	342	-	-	117	2,780
1.329		Communications								
		Monthly Usage (in town)	2.00 mo		-	-	-	200	-	200
1.602		Foresite Equipment								
		Foresite 3/4 Ton Pick up/Mo	2.00 mo		-	-	-	1,682	-	1,682
1.615		Gas & Minor Maint.								
		Gas & Minor Maint.	8.00 wk		-	-	-	1,440	-	1,440
2.000		SITEWORK								
2.533		Site Sport Items								
		Site Sport Subcontractor	1.00 ls		-	-	704,900	-	-	704,900

Estimate Totals

Description	Amount	Totals	Rate
Labor	6,711		
Material	342		
Subcontract	704,900		
Equipment	3,322		
Other	117		
	715,392	715,392	

Dec 20 07 10:37a

Susan Gordon



Ace Surfaces

409 Montgomery Road, Suite 145
Altamonte Springs, FL 32714
407-865-6279 - Fax 407-865-6289

PROPOSAL

SUBMITTED TO: ForeSite Attn: Scott Breeding
124 W. Orion, F3, Tempe, AZ 85283 Fax: 480-820-1305

PROJECT: City of Tempe, AZ - Kiwanis Park Recreation Center
6111 S. All-America Way, Tempe, AZ 85283

DATE: December 20, 2007

1. This is offered for acceptance within (30) days from date shown above, after which date it will be subject to reconfirmation or renegotiation. When duly executed by you and delivered to us it shall constitute a legal contract binding both parties, subject only to your credit approval by ACE Surfaces NA, Inc.
2. The work covered by this proposal shall be only that specifically outlined herein and to provide a price for the work in accordance with plans and specifications as furnished. Any change in the work or work not covered in this proposal will be considered as extra work and will be subject to further negotiation. Where there is a variance between the plans and specifications and this proposal, the prices quoted will be only for the work as outlined in this proposal. Local, city, or county licenses (if required) are not included in this quote. The Owner shall obtain required building permits and will conform all plans and specs to all governmental requirements.
3. ACE Surfaces NA, Inc. shall not be responsible for delays in completion caused by strikes, acts of God, labor disputes, accidents, delays of other contractors, inclement weather conditions, or other contingencies beyond our control.
4. Unobstructed vehicular access to each court is guaranteed by owner until completion of work. Owner to provide storage area for materials, electricity, dumpster and potable water supply within 100' of court(s). For rooftop application-free loading of jobsite will be provided by the owner/general contractor to Ace Surfaces
5. ACE Surfaces NA, Inc. is not obligated to continue work until terms of payment are fully met. Owner is solely responsible for all delays as per terms of contract. Any Warranty will not be in effect until Ace Surfaces is paid in full.
6. Unless specifically included in the contract price, the cost of any surety bonds or permits will be added to the contract price.
7. ANY CONTRACT OR PURCHASE ORDER DIRECTED TO ACE SURFACES as a result of or based upon this proposal MUST include reference to this proposal to become acceptable to ACE Surfaces NA, Inc.
8. Any payments not received as per contract shall bear interest at the rate of 1 1/2% per month, and you also agree to pay ACE Surfaces NA, Inc. cost and expense of collection including reasonable attorney's fees whether or not a suit is filed.
9. ACE Surfaces NA, Inc. is an equal opportunity employer in accordance with 41 CFR-4.3(A), 60-250.4(M), and 60-741.4(F).

Following is our proposal for court surfacing of 14 courts with Rebound Ace Air Cushion

SCOPE OF WORK

- Pressure clean court surface
- Fill cracks where needed
- Roll out 7mm recycled SBR rubber mat, glue joints and adhere around perimeter
- Apply two coats of Mat Sealer
- Apply Fiberglass mesh into the Tycoat
- Apply Cushioned Filler Coat
- Sand entire area
- Apply 2nd Cushion Filler Coat
- Apply two coats of Cushioned Topcoat
- Apply Line Marking for tennis

COLOR

By choice of owner

WATER, POWER AND DUMPSTER

Supplied on site by owner.

PERMIT FOR SURFACING

Provided by Owner

COURT SURFACE SYSTEMS

Court surface systems shall be applied according to the specifications given by the manufacturer Rebound Ace Sports

LEAD TIME:

Minimum of eight weeks lead-time have to be allowed between orders and begin of installation.



Ace Surfaces

409 Montgomery Road, Suite 145
Altamonte Springs, FL 32714
407-865-6279 - Fax 407-865-6289

PROPOSAL

WARRANTIES:

Five-year warranty on workmanship and materials for the surface. All work to be completed in a workman-like manner according to standard practices.

TENNIS COURT PROPOSAL

WE HEREBY PROPOSE TO PROVIDE MATERIALS AND LABOR COMPLETE IN ACCORDANCE WITH THE ABOVE SPECIFICATIONS FOR THE SUM OF:

Option 1 - 5 Courts	\$ 279,200.00
Option 2 - 10 Courts	\$ 525,400.00
Option 3 - 14 Courts	\$ 704,900.00
Practice Courts	
a. If Done with 5 courts	\$ 32,000.00
b. If Done with 10 courts	\$ 28,000.00
c. If Done with 14 courts	\$ 24,000.00

TOTAL: Option _____ + Practice Courts _____

*Court 11 will be removed and Rebound Ace Air Cushion installed under warranty

Terms of Payment

Fifty percent (50%) upon delivery of materials on site and start of work. Progress Invoicing will be done on the 25th of each month for work completed until job is completed. A 1.5% Late Payment Charge per month will apply to any unpaid balance as of 30 days after invoice date.

Acceptance of Proposal

The above cost, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Please have authorized person sign and return one copy to ACE SURFACES NORTH AMERICA, INC. at the address or fax number on the cover page.

We thank you for the privilege of quoting on the above described work.

ACE SURFACES NORTH AMERICA, INC.
409 MONTGOMERY RD, STE. 145
ALTAMONTE SPRINGS, FL 32714

SIGNED: _____

BY

FRANZ FASOLD
PRESIDENT

BY: _____

DATE: _____



COT Project Name: Kiwanis Park Tennis Court Resurfacing

COT Project Number:

LIST OF SUBCONTRACTORS

In accordance with the provisions of Section 108.2 of the MAG Specifications, the JOC Contractor shall provide for each Job Order the information listed below regarding proposed subcontractors which are subject to approval by the City.

Subcontractor			<u>% of Total</u>
<u>Name</u>	<u>Address</u>	<u>Type of Work</u>	<u>Contract</u>
Ace Surfaces NA Inc.	409 Montgomery Road, Suite 145 Altamonte Springs, FL 32714	Tennis court resurfacing	81.00

EXHIBIT B

FORMS APPENDIX

The following forms shall be completed and submitted with each Job Order.

LIST OF SUBCONTRACTORSSB-1

STATUTORY PERFORMANCE BONDB-1

STATUTORY PAYMENT BONDB-3

LIST OF SUBCONTRACTORS

In accordance with the provisions of Section 108.2 of the MAG Specifications, the JOC Contractor shall provide for each Job Order the information listed below regarding proposed subcontractors which are subject to approval by the City.

Subcontractor		Type of Work	% of Total Contract
<u>Name</u>	<u>Address</u>		

STATUTORY PERFORMANCE BOND PURSUANT TO TITLE 34,
CHAPTER 6, OF THE ARIZONA REVISED STATUTES
(Penalty of this bond must be 100% of the Contract amount)

KNOW ALL MEN BY THESE PRESENTS:

That, _____ (hereinafter called the Principal), as Principal and _____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____, (hereinafter called the Surety), are held and firmly bound unto _____ (hereinafter called the Obligee) in the amount of _____ Dollars (\$ _____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the 24th day of January, 2008, to complete Project No. 6302392, which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said Contract during the original term of said contract and any extension thereof, with or without notice to the Surety, and during the life of any guaranty required under the Contract, and shall also perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the Surety being hereby waived; then the above obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 34, Chapter 6, of the Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of said Title and Chapter, to the extent as if it were copied at length herein.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by the Court. The performance under this bond is limited to the construction to be performed under this contract and does not include any design services, preconstruction services, finance services, maintenance services, operations services or any other related services included in the contract.

Witness our hands this ____ day of _____, 2008.

PRINCIPAL SEAL

BY: _____

**

SURETY SEAL

BY: _____

AGENCY ADDRESS

** Surety hereby acknowledges they are licensed to do business in the State of Arizona **

STATUTORY PAYMENT BOND PURSUANT TO TITLE 34,
CHAPTER 6, OF THE ARIZONA REVISED STATUTES
(Penalty of this bond must be 100% of the Contract amount)

KNOW ALL MEN BY THESE PRESENTS:

That, _____(hereinafter called the Principal), as Principal and _____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____, (hereinafter called the Surety), as held and firmly bound unto _____(hereinafter called the Obligee) in the amount of _____ Dollars (\$_____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the 24th day of January, 2008, to complete Project No. 6302392, which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall promptly pay all monies due to all persons supplying labor or materials to the principal or the principal's subcontractors in the prosecution of the construction provided for the contract, then this obligation shall be void, otherwise to remain in full force and effect;

PROVIDED, HOWEVER, that this bond is executed pursuant to Title 34, Chapter 6, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of said Title and Chapter to the same extent as if it were copied at length in this Contract.

The prevailing party in a suit on this bond shall recover as a part of the judgment reasonable attorney fees that may be fixed by the Court.

Witness our hands this _____ day of _____, 2008.

PRINCIPAL

SEAL

BY: _____

**

SURETY

SEAL

BY: _____

AGENCY ADDRESS

** Surety hereby acknowledges they are licensed to do business in the State of Arizona **

**CITY OF TEMPE
TEMPE, ARIZONA
DEPARTMENT OF PUBLIC WORKS**

**JOC CONTRACTOR'S AFFIDAVIT
REGARDING
SETTLEMENT OF CLAIMS**

_____,
Arizona

Date _____

**KIWANIS TENNIS COURT RESURFACING
PROJECT NO. 6302392**

To the City of Tempe, Arizona

This is to certify that all lawful claims for materials, rental of equipment and labor used in connection with the construction of the above project, whether by subcontractor or claimant in person, have been duly discharged or will be discharged after receipt of the final payment from the City of Tempe for the above project.

The undersigned, for the consideration of \$_____, as set out in the final pay estimate, as full and complete payment under the terms of the contract, hereby waives and relinquishes any and all further claims or right of lien under, in connection with, or as a result of the above described project against the City of Tempe. The undersigned further agrees to defend, indemnify and save harmless the City of Tempe against any and all liens, claims of liens, suits, actions, damages, charges and expenses whatsoever, which said City may suffer arising out of the failure of the undersigned to pay for all labor performances, materials, and/or equipment furnished for the performance of said installation.

Signed and dated at _____ this _____ day of _____, 2008.

Job Order Contractor

By: _____

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was subscribed and sworn to before me this ____ day of _____, 2008.

Notary Public

My Commission Expires